

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES CARL KELLY,

Plaintiff,

v.

M. HIAING,

Defendant.

No. 2:24-cv-0633 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking injunctive relief. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
7 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
8 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
9 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
11 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
12 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
13 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
14 at 678. When considering whether a complaint states a claim upon which relief can be granted,
15 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
16 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
17 U.S. 232, 236 (1974).

18 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
19 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The
20 court will, however, grant leave to file an amended complaint.

21 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how conditions are
22 violating his constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Under the
23 Eighth Amendment, prison officials have a duty to protect prisoners from harmful conditions of
24 confinement. See Farmer v. Brennan, 511 U.S. 825, 833 (1994). To state a claim for injunctive
25 relief under the Eighth Amendment concerning conditions of confinement, plaintiff must point to
26 facts suggesting that he is being subjected to a substantial risk of serious harm and that prison
27 officials are at least deliberately indifferent to the risk. Id. at 834. Denial or delay of medical
28 care can also violate the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). To

1 state a claim for injunctive relief arising under the Eighth Amendment with respect to medical
2 care, plaintiff must point to facts suggesting the care he is receiving amounts to at least deliberate
3 indifference to his serious medical needs. Id. Plaintiff is informed that a difference of opinion
4 about the proper course of treatment is not deliberate indifference, nor does a dispute between a
5 prisoner and prison officials over the necessity for or extent of medical treatment, by itself,
6 amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir.
7 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

8 Finally, plaintiff is informed that the court cannot refer to a prior pleading to make
9 plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be
10 complete in itself without reference to any prior pleading.

11 In accordance with the above, IT IS HEREBY ORDERED that:


12 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

13 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
14 shall be collected and paid in accordance with this court's order to the Director of the California
15 Department of Corrections and Rehabilitation filed concurrently herewith.

16 3. Plaintiff's complaint is dismissed.

17 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
18 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
19 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
20 number assigned this case and must be labeled "Amended Complaint." Failure to file an
21 amended complaint in accordance with this order will result in a recommendation that this action
22 be dismissed.

23 Dated: April 10, 2024

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25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE
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